

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Comcast Corporation	)	MB Docket No. 14-57
and Time Warner Cable Inc.	)	
	)	
For Consent to Transfer Control of	)	
Licenses and Authorizations	)	

**FURTHER REPLY COMMENTS AND PROPOSED CONDITIONS**

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December 23, 2014

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**FURTHER REPLY COMMENTS AND PROPOSED CONDITIONS**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, and the FBC Television Affiliates Association (collectively, the “Affiliate Associations”),<sup>1</sup> by their attorneys, respectfully reply to comments filed in connection with the above-captioned proceeding and transaction (“TW Transaction”).<sup>2</sup>

In 2010, the non-NBCU Stations reached a voluntary agreement with Comcast Corporation (“Comcast”), to ensure that Comcast and its cable television systems (“Comcast Cable Systems”), through its acquisition of NBCUniversal (“NBCU”), would not unfairly discriminate

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<sup>1</sup> The ABC Television Affiliates Association is a nonprofit trade association representing television stations affiliated with the ABC Television Network. The CBS Television Network Affiliates Association is a nonprofit trade association representing television stations affiliated with the CBS Television Network. The FBC Television Affiliates Association is a nonprofit trade association representing television stations affiliated with the Fox Television Network. Collectively, the Affiliate Associations represent more than 500 television stations affiliated with the three principal commercial television networks that are not related to parties to the TW Transaction.

<sup>2</sup> *Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, DA 14-986, MB Docket No. 14-57 (rel. July 10, 2014) (“Notice”).

against or competitively disadvantage local broadcast stations not owned by or affiliated with the NBC or Telemundo Television Networks (defined herein as “non-NBCU Stations”)<sup>3</sup> That agreement was incorporated by mutual consent into the Commission’s 2011 Order approving Comcast’s acquisition of NBCU.<sup>4</sup>

The manner in which video programming is distributed and viewed has changed since 2011 when the Commission approved Comcast’s acquisition of NBCU. As a result of these changes, the Affiliate Associations have had concerns about Comcast’s acquisition of Time Warner Cable.<sup>5</sup> We are pleased to report that the Affiliate Associations and Comcast have been engaged in constructive and collegial discussions that have led to a voluntary agreement (“Agreement”), to amend and restate the 2010 agreement and to resolve the Affiliate Associations’ concerns.

The Affiliate Associations propose—a proposal to which Comcast does not object—that Sections 1-8 of the Amended and Restated Agreement (“Agreement”) (attached hereto as

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<sup>3</sup> As used herein, the term “NBCU Stations” means television broadcast stations owned by, controlled by, or under common control with Comcast or affiliated with the NBC Television Network, the Telemundo Network, or any other television broadcast network owned by, controlled by, or under common control with Comcast.

<sup>4</sup> *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011) (“*Comcast/NBCU Order*”), at ¶ 168 & Appendix F. In fact, one of the conditions mutually agreed to was extended by order of the Commission

<sup>5</sup> The Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc., MB Docket No. 14-57 (April 8, 2014) (“*Applications*”), seek approval of a TW Transaction in which (1) Comcast would acquire certain cable systems from TWC, (2) Comcast would sell certain cable systems to, and acquire other cable systems from, Charter Communications, and (3) Comcast would divest itself of certain cable systems to SpinCo, as detailed in applications filed in MB Docket No. 14-57. *See Applications* at 7; *Notice* at 1-2. According to Comcast, the TW Transaction will leave the combined company with less than 30 percent of all managed residential MVPD customers nationwide. *See Applications* at 6-7, 143.

Exhibit 1) be incorporated as conditions to, and made a part of, any order by the Commission approving the TW Transaction.

With the exception of the one concern explained in the Affiliate Association's earlier filed Reply Comments, incorporation of these Agreement provisions into an order approving the TW Transaction will resolve all concerns and objections of the Affiliate Associations to the Commission's approval of the TW Transaction.<sup>6</sup>

The proposed Conditions, which both Comcast and the Affiliate Associations agree may be incorporated into a Commission order approving the TW Transaction, are as follows:

### **Conditions**

- 1. Term.** These Conditions shall be effective as of the date Comcast acquires control of Time Warner Cable, Inc. (such acquisition, the "TWC Transaction") and shall expire on the earlier of the tenth (10<sup>th</sup>) anniversary of the closing of the TWC Transaction or such time as the NBC Television Network is no longer jointly owned with Comcast Cable Communications, LLC or controlled by Comcast; provided further, however and notwithstanding the preceding, Condition Number 3 below shall remain in effect until such time as the NBC Television Network is no longer jointly owned with Comcast Cable Communications, LLC or controlled by Comcast.
- 2. Retransmission Consent Negotiations.** Neither Comcast nor any cable system wholly-owned by, controlled by, or under common control with Comcast (the latter, "Comcast Cable Systems") shall discriminate with respect to its retransmission consent negotiations with any television broadcast station that is affiliated with the ABC, CBS, or FOX Television Network (such stations, the "non-NBCU Stations") because such television broadcast station is not owned by, controlled by, or under common control with Comcast or affiliated with the

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<sup>6</sup> The one concern on which agreement could not be reached is the issue of joint retransmission consent negotiations by Comcast with other MVPDs as set forth in the Affiliate Associations' Reply Comments filed September 24, 2014 in this proceeding.

NBC or Telemundo Television Networks. (Television stations wholly-owned by, controlled by, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks are referred to herein as “NBCU Stations.”) Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of retransmission consent negotiations will not be deemed to constitute discrimination for purposes of [this Agreement]. Not by way of limitation, the parties acknowledge that differences in retransmission consent fees or other economic consideration are not discrimination if such differences are based on competitive marketplace considerations.

3. **Separate Negotiations.** Comcast Cable Systems shall not link or engage in decision-making with NBCUniversal Media, LLC (“NBCU”) with respect to retransmission consent negotiations with non-NBCU Stations. Comcast agrees that NBCU will remain solely responsible for negotiating retransmission consent of NBCU-owned broadcast stations with non-Comcast MVPDs (i.e., multi-channel video programming distributors), and Comcast and the Comcast Cable Systems will remain solely responsible for negotiating retransmission consent with non-NBCU Stations. Retransmission consent negotiations with non-NBCU Stations will be conducted by Comcast and Comcast Cable Systems separate from, and without influence by, NBCU and NBCU Stations.
4. **Use of NBCU Retransmission Consent Agreements in Other Proceedings.** In advocating its position as to whether rates, terms, and other carriage and retransmission conditions are consistent with “competitive marketplace conditions” in any retransmission consent complaint or any other retransmission consent-related legal proceeding involving a non-NBCU Station, Comcast and the Comcast Cable Systems waive their right to, and shall not rely on or cite, the terms of any retransmission consent agreement between Comcast or a Comcast Cable System and any NBCU Station that is entered into following the close and consummation of the TWC Transaction.
5. **Arm’s Length Negotiations.** Comcast and/or any Comcast Cable System shall negotiate retransmission consent and carriage at arm’s length and in good faith with respect to non-NBCU Stations.
6. **Technical Non-Discrimination Provisions.** Comcast shall not, nor shall any Comcast Cable System, attempt to create a competitive advantage for an NBCU Station by discriminating against any local, in-market non-NBCU Station in favor of such NBCU Station licensed to the same market with respect to the following technical signal carriage matters: changes in channel positions of non-NBCU Stations; downconversion of a non-NBCU Station’s signal from digital to analog or from high definition to standard definition; retransmission of a non-NBCU Station’s digital broadcast signal in a lesser format, lower quality, or lower resolution than that of an NBCU Station; forced or automatic tuning of set top

boxes to a local, in-market NBCU Station; or interruption of a non-NBCU Station's broadcast with a Comcast Cable System or NBCU Station EAS message, unless otherwise agreed to in writing by such Station; provided, however, that when making any comparisons between such non-NBCU Station and any NBCU Station for purposes of this Condition Number 6, the following shall be taken into account: (i) relevant ATSC formats, data rates and other relevant technical factors, as applicable, (ii) the quality of signal delivered to a Comcast Cable System's reception point by such non-NBCU Station and by the applicable NBCU Station, (iii) a lower channel number is not necessarily more favorable than a higher channel number in the same channel neighborhood, and (iv) over-the-air frequency, PSIP, and historical channel positioning.

7. **Other Non-Discrimination Provisions.** Comcast shall not, nor shall a Comcast Cable System, attempt to create a competitive advantage for an NBCU Station by discriminating against any local, in-market non-NBCU Station that is licensed to the same market with respect to the following: (a) the resolution and bandwidth used for the retransmission of the non-NBCU Station's signal; (b) opportunities for authentication, including, but not limited to, "TV Everywhere", of non-NBCU Station subscribers; (c) opportunities for "on-demand," "start over," or "look back" technology; (d) opportunities for interactive or targeted advertising technology during the first five (5) years after Comcast commences commercially deploying such technology with any NBCU Station; (e) opportunities to combine remnant inventory on Comcast Spotlight to offer national and local advertisers an unwired network or aggregated targeted campaign program (Comcast Spotlight's Data and Analytics Systems will identify the markets, dayparts, and programs with the highest composition of an advertiser's target audience) during the same five (5) year period as provided for in clause (d); (f) opportunities to participate in "NBCU+ like" local joint sales arrangements for the non-NBCU Station during the same five (5) year period as provided for in clause (d); (g) opportunities for the non-NBCU Station to preclude the deployment by a Comcast Cable System of ad-skipping technology; (h) opportunities for the non-NBCU Station to preclude the deployment by a Comcast Cable System of the use of any "Aereo-like" antenna-receiving device to retransmit a non-NBCU Station; or (i) opportunities to be included in a Comcast Cable System's local program guide(s).
8. **Non-Discrimination Standard.** Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of business will not be deemed to constitute discrimination for purposes of [this Agreement], nor will competitive impacts and/or differences due to competitive marketplace considerations and the timing of renewals and negotiations be deemed to constitute discrimination for purposes of this Agreement. Furthermore, the opportunities set forth in this Agreement and commitments on resolution, bandwidth and other technical signal carriage matters set forth in this

Agreement may require a non-NBCU Station to agree to reasonable commercial terms or other similar conditions, including, without limitation, the obligation for a non-NBCU Station to provide economic value in exchange for such opportunities and/or commitments.

In conclusion, it is respectfully requested, that these Conditions be incorporated into any Commission order or decision approving the TW Transaction. A copy of these Reply Comments has been provided to Comcast.

Respectfully submitted,

**ABC TELEVISION AFFILIATES ASSOCIATION**

**CBS TELEVISION NETWORK AFFILIATES  
ASSOCIATION**

**FBC TELEVISION AFFILIATES ASSOCIATION**

/s/ \_\_\_\_\_

Wade H. Hargrove

/s/ \_\_\_\_\_

Mark J. Prak

/s/ \_\_\_\_\_

Julia C. Ambrose

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Their Attorneys

December 23, 2014

## **EXHIBIT 1**

### **THE AGREEMENT**



## Amended and Restated Agreement

This Amended and Restated Agreement ("Agreement") is made this 23<sup>rd</sup> day of September, 2014, between Comcast Corporation ("Comcast") and the ABC Television Affiliates Association, Inc., the CBS Television Network Affiliates Association, Inc., and the FBC Television Affiliates Association, Inc. (collectively "the Associations"). In consideration of good and valuable consideration, the receipt of which is hereby acknowledged, Comcast, on its behalf and on behalf of Comcast Cable Communications, LLC, agrees as follows:

1. Term. This Agreement amends and restates the Agreement dated June 21, 2010 between Comcast and the Affiliate Associations (the "2010 Agreement"), and will be effective as of the date Comcast acquires control of Time Warner Cable, Inc. (such acquisition, the "TWC Transaction") and shall expire on the earlier of the tenth (10<sup>th</sup>) anniversary of the closing of the TWC Transaction or such time as the NBC Television Network is no longer jointly owned with Comcast Cable Communications, LLC or controlled by Comcast; provided further, however and notwithstanding the preceding, Section 3 of this Agreement shall remain in effect until such time as the NBC Television Network is no longer jointly owned with Comcast Cable, LLC or controlled by Comcast.
2. Retransmission Consent Negotiations. Neither Comcast nor any cable system wholly-owned by, controlled by, or under common control with Comcast (the latter, "Comcast Cable Systems") will discriminate with respect to its retransmission consent negotiations with any television broadcast station that is affiliated with the ABC, CBS, or FOX Television Network (such stations, the "non-NBCU Stations") because such television broadcast station is not owned by, controlled by, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks. (Television stations wholly-owned by, controlled by, or under common control with Comcast or affiliated with the NBC or Telemundo Television Networks are referred to herein as "NBCU Stations.") Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of retransmission consent negotiations will not be deemed to constitute discrimination for purposes of this Agreement. Not by way of limitation, the parties acknowledge that differences in retransmission consent fees or other economic consideration are not discrimination if such differences are based on competitive marketplace considerations.
3. Separate Negotiations. Comcast Cable Systems will not link or engage in decision-making with NBCUniversal Media, LLC ("NBCU") with respect to retransmission consent negotiations with non-NBCU Stations. Comcast agrees that NBCU will remain solely responsible for negotiating retransmission consent of NBCU-owned broadcast stations with non-Comcast MVPDs (i.e., multi-channel video programming distributors), and Comcast and the Comcast Cable Systems will remain solely responsible for negotiating retransmission consent with non-NBCU Stations. Retransmission consent negotiations with non-NBCU

Stations will be conducted by Comcast and Comcast Cable Systems separate from, and without influence by, NBCU and NBCU Stations.

4. Use of NBCU Retransmission Consent Agreement in Other Proceedings. In advocating its position as to whether rates, terms, and other carriage and retransmission conditions are consistent with “competitive marketplace conditions” in any retransmission consent complaint or any other retransmission consent-related legal proceeding involving a non-NBCU Station, Comcast and the Comcast Cable Systems waive their right to, and will not rely on or cite, the terms of any retransmission consent agreement between Comcast or a Comcast Cable System and any NBCU Station that is entered into following the close and consummation of the TWC Transaction.
5. Arm’s Length Negotiations. Comcast and/or any Comcast Cable System will negotiate retransmission consent and carriage at arm’s length and in good faith with respect to non-NBCU Stations.
6. Technical Non-Discrimination Provisions. Comcast will not, nor will any Comcast Cable System, attempt to create a competitive advantage for an NBCU Station by discriminating against any local, in-market non-NBCU Station in favor of such NBCU Station licensed to the same market with respect to the following technical signal carriage matters: changes in channel positions of non-NBCU Stations; downconversion of a non-NBCU Station’s signal from digital to analog or from high definition to standard definition; retransmission of a non-NBCU Station’s digital broadcast signal in a lesser format, lower quality, or lower resolution than that of an NBCU Station; forced or automatic tuning of set top boxes to a local, in-market NBCU Station; or interruption of a non-NBCU Station’s broadcast with a Comcast Cable System or NBCU Station EAS message, unless otherwise agreed to in writing by such Station; provided, however, that when making any comparisons between such non-NBCU Station and any NBCU Station for purposes of this Section 6 the following shall be taken into account: (i) relevant ATSC formats, data rates and other relevant technical factors, as applicable, (ii) the quality of signal delivered to a Comcast Cable System’s reception point by such non-NBCU Station and by the applicable NBCU Station, (iii) a lower channel number is not necessarily more favorable than a higher channel number in the same channel neighborhood, and (iv) over-the-air frequency, PSIP, and historical channel positioning.
7. Other Non-Discrimination Provisions. Comcast will not, nor will a Comcast Cable System, attempt to create a competitive advantage for an NBCU Station by discriminating against any local, in-market non-NBCU Station that is licensed to the same market with respect to the following: (a) the resolution and bandwidth used for the retransmission of the non-NBCU Station’s signal; (b) opportunities for authentication, including, but not limited to, “TV Everywhere”, of non-NBCU Station subscribers; (c) opportunities for “on-demand,” “start over,” or “look back” technology; (d) opportunities for interactive or targeted advertising

technology during the first five (5) years after Comcast commences commercially deploying such technology with any NBCU Station; (e) opportunities to combine remnant inventory on Comcast Spotlight to offer national and local advertisers an unwired network or aggregated targeted campaign program (Comcast Spotlight's Data and Analytics Systems will identify the markets, dayparts, and programs with the highest composition of an advertiser's target audience) during the same five (5) year period as provided for in clause (d); (f) opportunities to participate in "NBCU+ like" local joint sales arrangements for the non-NBCU Station during the same five (5) year period as provided for in clause (d); (g) opportunities for the non-NBCU Station to preclude the deployment by a Comcast Cable System of ad-skipping technology; (h) opportunities for the non-NBCU Station to preclude the deployment by a Comcast Cable System of the use of any "Aereo-like" antenna-receiving device to retransmit a non-NBCU Station; or (i) opportunities to be included in a Comcast Cable System's local program guide(s).

8. Non-Discrimination Standard. Any competitive impact against an individual non-NBCU Station incidental to the ordinary course of business will not be deemed to constitute discrimination for purposes of this Agreement, nor will competitive impacts and/or differences due to competitive marketplace considerations and the timing of renewals and negotiations be deemed to constitute discrimination for purposes of this Agreement. Furthermore, the opportunities set forth in this Agreement and commitments on resolution, bandwidth and other technical signal carriage matters set forth in this Agreement may require a non-NBCU Station to agree to reasonable commercial terms or other similar conditions, including, without limitation, the obligation for a non-NBCU Station to provide economic value in exchange for such opportunities and/or commitments.
9. Repeal of Retrans Consent. Comcast will not, nor will a Comcast Cable System, attempt to create a competitive advantage for an NBCU Station or Comcast Cable System by advocating before any government official or agency of government for repeal of the current statutory and regulatory right of non-NBCU Stations to obtain the consent for retransmission of the signals of broadcast stations.
10. Commitment to Open Internet. Comcast references its commitment in the NBCU Order to its adherence to the Open Internet Rules, despite such Rules having been struck down by the D.C. Circuit Court of Appeals.
11. It is agreed that Sections 1-8 may be incorporated into a Federal Communications Commission order or a Department of Justice consent decree as binding conditions to the approval of the TWC Transaction. Comcast acknowledges and agrees that the Associations and/or their member non-NBCU Stations would suffer irreparable harm upon breach by Comcast and that money damages would not be adequate, and the Agreement shall therefore be enforceable by a decree of specific performance, preliminary and/or permanent injunction(s), and all other remedies available in law or equity. Comcast acknowledges and agrees that each of the non-NBCU Stations is a third party beneficiary of this Agreement and may

enforce any of Comcast's obligations therein. This Agreement shall be binding upon the parties hereto, their successors, and assigns.

12. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision of this Agreement and, in the event that any provision is determined to be invalid or otherwise illegal, this Agreement shall remain in effect and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.
13. No term or condition of this Agreement shall be deemed waived, and no breach shall be excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which any party would otherwise have at law, in equity, by statute, or otherwise.
14. This Agreement may be executed in counterparts and by facsimile or email, each of which, when so executed, will be deemed an original, and all of which together shall constitute one and the same instrument.
15. Notices sent pursuant to this Agreement shall be forwarded by First Class U.S. mail or overnight courier as follows:

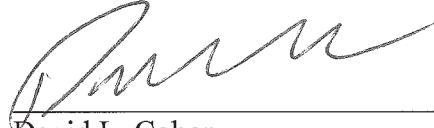
If to Comcast:

David L. Cohen  
Executive Vice President  
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One Comcast Center  
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If to one or more of the Associations:

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COMCAST CORPORATION



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David L. Cohen  
Executive Vice President

ABC TELEVISION AFFILIATES ASSOCIATION

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Michael M. Devlin  
Chair

CBS TELEVISION NETWORK  
AFFILIATES ASSOCIATION

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Jeff Rosser  
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COMCAST CORPORATION

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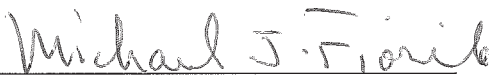
David L. Cohen  
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